



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

August 29, 2005

AO-05-13

Scott Lang
Lang, Xifaras & Bullard
115 Orchard Street
New Bedford, MA 02740

Re: Political Fundraising

Dear Mr. Lang:

This letter is in response to your recent request for guidance as to whether you would be subject to the political fundraising restrictions that apply to public employees as set forth in M.G.L. c. 55, § 13 under the circumstances described in your letter.

Since 1992, you have been an adjunct professor at the University of Massachusetts Dartmouth (the University) on a part-time basis. The chair of the department generally asks you in advance if you would consider teaching a particular course, and they advertise for that course. Your employment each semester is contingent upon the school having a requisite number of students register for the particular course. If a course will be provided, the school sends you a contract for you to sign, and you begin teaching shortly thereafter. Although a number of variables affect whether or not you will actually teach in a particular semester, you have an expectation that you will teach each year and with only two exceptions you have taught at least one course each academic year since 1992. In the last two academic years you have taught at least one class each semester. You are covered by a dental plan that continues through the summer when you teach two consecutive semesters, so you have been covered by the dental plan during each of the last two summers.

You have not yet signed a contract for the fall 2005 semester, but you expect to receive a contract shortly. You are now a candidate for Mayor of the City of New Bedford. You would like an advisory opinion regarding when and if you can solicit and receive political contributions under the following circumstances.

QUESTIONS

1. May you solicit and receive political contributions before signing a contract to teach the 2005 fall semester?

2. May you solicit and receive political contributions after signing the contract but before you begin teaching?
3. If you choose to not accept a salary (and the University allows you to teach) may you solicit and receive contributions?

RESPONSE

You would be considered a person employed for compensation by the commonwealth. Therefore, each question can be answered in the negative. To ensure compliance with the campaign finance law you should not at this time solicit or receive contributions, notwithstanding the absence of a contract to teach a new course. In addition, you would be subject to the restrictions of M.G.L. c. 55, § 13 even if you forgo salary to which you are entitled.

DISCUSSION

The campaign finance law prohibits persons, other than elected officials, who are “employed for compensation ... by the commonwealth” from directly or indirectly soliciting or receiving any contribution or other thing of value for any political purpose whatsoever. *See* M.G.L. c. 55, § 13.

Public employees may, however, run for public office. If a public employee plans to raise money as part of his campaign for public office, the employee/candidate must organize a political committee and have the political committee handle all fundraising activities.

The office has consistently interpreted the term “employed for compensation” to include part-time public employees or persons who are intermittently employed during a period of time in which they have agreed to provide services to the commonwealth or one of its subdivisions. *See* OCPF’s Interpretive Bulletin IB-92-01, in which the office stated that “persons employed for compensation” include both full-time and part-time employees who receive any amount of compensation. The prohibition applies to such persons at all times, during working and non-working hours.

On the other hand, Section 13 does not apply to “independent contractors.” *See* AO-02-28. An independent contractor is a person who “contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking.”

The office considers a number of factors in determining whether a person is an independent contractor. Compare AO-95-26 (sole proprietor computer consultant who has a contract with a state agency as one of many clients, has no office at the agency, sets his own hours, is not supervised or controlled by the agency, and provides guidance or advice on an as-needed basis, is an “independent contractor” not subject to section 13); and AO-93-24 (volunteer fire fighter is not an independent contractor even though he sets his own hours because he is subject to supervision and control).

The office has stated that a part-time instructor in an informal local adult education program was an independent contractor where the town did not supervise the instructors, require a contract, or provide work-related benefits, and the instructor and the students scheduled the classes when there was interest at a mutually convenient time. *See* AO-98-05.

In this instance, unlike in AO-98-05, there is an employment relationship between you and the University. You provide services pursuant to a contract, are eligible for certain employment benefits if you teach the requisite number of classes, and you do not schedule the time of classes that you teach (you must teach in one of the particular blocks of time for classes, as designated by the University). In addition, you expect to teach classes for compensation each year for the University, and in fact have taught classes in almost every year since 1992. Given these circumstances, you are considered to be “employed for compensation” and may not solicit or receive political contributions. You may solicit or receive contributions, however, when you no longer teach classes and request to be removed from the list of adjunct professors.

In response to your last question, Section 13 is designed primarily to prevent corruption or the appearance of corruption on the part of appointed public officials within the context of political fundraising efforts. Even if you were to not accept your salary you would still be identified as a public employee. In such circumstances, the office has advised that a public employee’s forgoing compensation is not sufficient to remove the employee from the prohibitions of Section 13. *See* AO-92-07.

Finally, you should note that you are also subject to the second sentence of Section 13, which states that your political committee may not solicit or receive contributions from certain persons. In particular, it states that your committee may not solicit or receive contributions from any person who “has an interest in any particular matter” in which you participate or have participated in the course of your employment or “*which is the subject of your official responsibility.*” (Emphasis added). To comply with this provision, your committee may not solicit or receive contributions from persons who are students at the time of the solicitation or contribution. This provision would not, however, prohibit a student from volunteering to provide personal services to your campaign, although asking students to provide such services may raise issues under the conflict of interest law, M.G.L. c. 268A. You should contact the State Ethics Commission for guidance to ensure compliance with that statute.

This opinion is issued solely within the context of the Massachusetts campaign finance law and is based on the representations made in your letter and to OCPF’s staff. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script that reads "Michael J. Sullivan". The signature is written in dark ink and is positioned to the left of a vertical line.

Michael J. Sullivan
Director

MJS:gb